

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVE B. LUNDAHL

Appeal 2006-1417
Application 09/326,405
Technology Center 3600

Decided: October 27, 2006

Before KIMLN, GARRIS, and WARREN, *Administrative Patent Judges*.
KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 11-33. Claim 11 is illustrative:

11. An operable window system with a removable screen comprising:
 - a fixed frame;
 - a moving sash connected to said fixed frame and operable to substantially swing about an axis with respect to said fixed frame from an open position to a closed position; and

Appeal 2006-1417
Application 09/326,405

a removable screen without a substantially rigid peripheral frame removably connected to said fixed frame with hook and loop fasteners, said removable screen mounted between said fixed frame and said moving sash.

The Examiner relies upon the following references as evidence of obviousness:

Kehne	US 2,713,896	Jul. 26, 1955
Lazarek	US 3,753,458	Aug. 21, 1973
Jones	US 5,365,707	Nov. 22, 1994

Appellant's claimed invention is directed to an operable window system comprising a fixed frame, a moving sash connected to the frame and operable to swing from an open position to a closed position, and a removable screen that is mounted between the fixed frame and the moving sash. The screen is without a substantially rigid peripheral frame and is connected to the fixed frame with hook and loop fasteners.

Appealed claims 11-13, 15-18, 20-23, 25-28, and 30-33 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kehne in view of Lazarek. Claims 14, 19, 24, and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the stated combination of references further in view of Jones.

Appellant provides separate arguments for claims 20 and 25, as a group. Accordingly, claims 11-13, 15-18, 21-23, 26-28, and 30-33 stand or fall together as a group, as do separately rejected claims 14, 19, 24, and 29.

We have thoroughly reviewed each of Appellant's arguments for patentability, as well as the declaration evidence relied upon in support thereof. However, we are in complete agreement with the Examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the Examiner's rejections for the reasons set forth in the Answer, which we incorporate herein, and we add the following primarily for emphasis.

Appellant does not contest the Examiner's factual determination that Kehne, like Appellant, discloses an operable window system comprising a fixed frame, a moving sash operable to substantially swing about an axis with respect to the fixed frame from an open position to a closed position, and a screen that is mounted between the fixed frame and the moving sash. As recognized by the Examiner, Kehne does not disclose that the screen is connected to the fixed frame with hook and loop fasteners. However, as explained by the Examiner, Lazarek discloses a removable window screen that is attached to the window's fixed frame with hook and loop fasteners which provide easy and quick mounting and dismounting of the screen. Accordingly, based on the collective teachings of Kehne and Lazarek, we concur with the Examiner that it would have been obvious for one of ordinary skill in the art to employ the hook and loop fasteners of Lazarek in the window system of Kehne to provide the described advantage of enabling the screen to be readily mounted and dismounted. We also find that one of

ordinary skill in the art would have appreciated any savings in cost associated with replacing an aluminum frame with a periphery of hook and loop fasteners.

Appellant contends that the references are not combinable because Kehne mounts the screen on the exterior portion of the window whereas Lazarek mounts the screen to the interior portion of the window. However, it is well settled that it is not necessary for a finding of obviousness under § 103 that all the features of one reference be incorporated with the features of another reference. *In re Griver*, 354 F.2d 377, 381, 148 USPQ 197, 200 (CCPA 1966); *In re Billingsley*, 279 F.2d 689, 691, 126 USPQ 370, 372 (CCPA 1960). The relevant question is what would the collective teachings of the references have suggested to one of ordinary skill in the art. *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In the present case, we are satisfied that the collective teachings of Kehne and Lazarek would have suggested the use of hook and loop fasteners for removably connecting the screen of Kehne to the fixed frame. While Appellant maintains that Kehne teaches a permanently mounted screen, we agree with the Examiner that Kehne's disclosure of supporting a screen "in a more or less permanent manner" would have suggested a screen that is ultimately removable (*see* col. 1, ll. 60-62). Furthermore, we agree with the Examiner that it was notoriously well known in the art to provide removable screens in the fixed frame of a window.

Appellant also maintains that Lazarek “clearly does not suggest any method for ‘mounting the screen in a permanent manner’ as set forth in Appellant’s claims” (principal Br. 7, second paragraph). This argument is not germane to the claimed subject matter since the quoted recitation is not found in the appealed claims. Indeed, rather than calling for mounting the screen in a permanent manner, the claims recite a removable screen.

Appellant also makes the argument that:

Claims 20 and 25 recite an additional limitation in which the removable screen is mounted between the fixed frame and the moving sash such that the moving sash is in contact with the removable screen when the moving sash is in the closed position such that the hook and loop fastener is engaged.

(principal Br. 8, second paragraph). However, as accurately noted by the Examiner, Figure 3 of Kehne “shows the sash touching the screen when the sash is in the closed position” (Supp. Answer 8, last paragraph).

As for the separately argued claims directed to the window system being non-rectangular, we concur with the Examiner that Jones evidences the obviousness of making windows of various shapes.

Appellant relies upon the Helzer and Thompson Declarations under 37 C.F.R. § 1.132 as evidence of commercial success. However, we find that the Examiner has lodged valid criticisms regarding the weight of the Declaration evidence. For instance, the Declaration of Helzer, the Vice President for Marketing and Sales for the present assignee, states in paragraph 15 that Point Five Windows, the exclusive licensee of a window system in accordance with the appealed claims, “has sold over \$6,300,000 in

15 major orders of window systems that include the Frameless Velcro Screen System” (emphasis added). As pointed out by the Examiner, there is no indication what proportion of the reported figure represents the sale of window systems in accordance with the appealed claims. Similarly, paragraph 18 of the Declaration reports a contract in excess of \$720,000 for unspecified windows and doors, while paragraph 21 of the Declaration refers to a contract in excess of \$580,000 for “casement type windows” that is “due in part to the aesthetic value of the Frameless Velcro Screen System” (emphasis added). Also, while paragraph 22 of the Declaration states that the \$580,000 contract was specifically entered “because the screen was mounted between the fixed frame and moving sash for a casement window,” the Examiner correctly points out that the window system of Kehne has the screen mounted between the fixed frame and the moving sash. In addition, although paragraph 11 of the Declaration states that “conventional screen frames with spans in excess of five feet require support members,” the appealed claims do not recite any particular size for the screen.

The Declaration of Michael Thompson, an architect who supported a contract in excess of \$580,000 to the present assignee, is similarly flawed. Paragraph 2 of the Declaration vaguely refers to the contract “for numerous windows for a residence project.” Furthermore, in paragraph 7, the Declarant states that the contract was awarded “due in part” to the window system of the present invention. Manifestly, the Thompson Declaration, as well as the Helzer Declaration, falls short of convincingly demonstrating the

requisite nexus between the asserted commercial success and window systems within the scope of the appealed claims. *Ex parte Remark*, 15 USPQ2d 1498, 1502 (Bd. Pat. App. & Int. 1990).

Furthermore, we agree with the Examiner that the Declaration evidence fails to establish that any commercial success was due to the merits of the claimed invention rather than other activities on the part of the present assignee, e.g., advertising, sales campaigns, and associations with established customers. *See Cable Elec. Prod. Inc. v. Genmark, Inc.*, 770 F.2d 1015, 1026-27, 226 USPQ 881, 888 (Fed. Cir. 1985).

Accordingly, it is our judgment that Appellant's evidence of nonobviousness, including the Declaration evidence of commercial success, does not outweigh the evidence of obviousness presented by the Examiner. *In re Rynkiewicz*, 390 F.2d 742, 746, 156 USPQ 462, 465 (CCPA 1968).

In conclusion, based on the foregoing and the reasons well stated by the Examiner, the Examiner's decision rejecting the appealed claims is affirmed.

Appeal 2006-1417
Application 09/326,405

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2004).

AFFIRMED

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